

STATE OF MICHIGAN
COURT OF APPEALS

ELLEN PAULE,

Plaintiff-Appellant,

v

MICHAEL IWANIW and JOAN IWANIW,

Defendant-Appellees.

UNPUBLISHED

October 5, 2001

No. 225590

Muskegon Circuit Court

LC No. 99-039473-CH

Before: Griffin, P.J., and Gage and Meter, JJ.

METER, J. (*concurring.*)

I concur in the decision to affirm the trial court with regard to the innocent misrepresentation claim and to reverse the trial court with regard to the fraudulent misrepresentation claim. I write separately, however, to emphasize that plaintiff presented a *bare quantum* of evidence to create a jury-submittable issue regarding fraudulent misrepresentation.

Indeed, the simple assertions in plaintiff's interrogatory answers that there were "[c]racks in the basement walls," "two cement block columns supporting the east wall of the basement [sic]," and "[w]itness accounts of the flooding in the basement" did not, in my opinion, provide evidence of a structural deficiency. If plaintiff had provided more *detail* with regard to these assertions – i.e., if plaintiff had documented the extent and nature of the cracks, the apparent purpose of the cement block columns, or the degree, frequency, and apparent cause of the flooding – then the assertions perhaps would have been relevant to the question of the house's structural integrity. Plaintiff, however, did not provide such detail.

Moreover, I agree with the majority that the affidavit of Richard Fassett was conclusory and not probative under an MCR 2.116(C)(10) analysis. Accordingly, the only assertion I find supportive of plaintiff's fraudulent misrepresentation case is plaintiff's statement in her discovery answers that the basement walls were bowing. While plaintiff again should have provided more detail in her discussion of the bowing, I nonetheless find that this statement was sufficient to overcome defendant's motion for summary disposition, given the obviously serious nature of the statement and its indisputable relevance to the structural integrity of the house. I caution, however, that plaintiffs endeavoring to avoid summary disposition should set forth the factual basis of their claims with greater detail than that set forth in the instant case.

/s/ Patrick M. Meter